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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues Against:

Case No. 1H-2009-187

JOHN RIMMER VANDERHOEK
140 Yorktown Lane
Costa Mesa, CA 92626

STATEMENT OF ISSUES

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Statement of Issues solely in her official capacity as the Executive Officer of the Respiratory Care Board of California.

2. On or about March 26, 2009, the Respiratory Care Board of California (Board) received a complete application for a Respiratory Care Practitioner License from JOHN RIMMER VANDERHOEK (Respondent). On or about February 24, 2009, Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on or about August 3, 2009. On or about August 21, 2009, Respondent requested a hearing to contest the denial of his application for licensure.

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JURISDICTION

3. This Statement of Issues is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 3710 of the Code states, in pertinent part, that “The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act].”

5. Section 3718 of the Code states: “The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter.”

6. Section 3750 of the Code states:

“The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

“...

“(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.

“...”

7. Section 3732 of the Code states:

“(a) The board shall investigate an applicant for a license, before a license is issued, in order to determine whether or not the applicant has the qualifications required by this chapter.

“(b) The board may deny an application, or may order the issuance of a license with terms and conditions, for any of the causes specified in this chapter for suspension or revocation of a license, including, but not limited to, those causes specified in Sections 3750, 3750.5, 3752.5, 3752.6, 3755, 3757, 3760, and 3761.”

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1 8. Section 3752 of the Code states,

2 “A plea or verdict of guilty or a conviction following a plea of nolo
3 contendere made to a charge of any offense which substantially relates to
4 the qualifications, functions, or duties of a respiratory care practitioner is
5 deemed to be a conviction within the meaning of this article. The board
6 shall order the license suspended or revoked, or may decline to issue a
7 license, when the time for appeal has elapsed, or the judgment of
8 conviction has been affirmed on appeal or when an order granting
9 probation is made suspending the imposition of sentence, irrespective of a
10 subsequent order under Section 1203.4 of the Penal Code allowing the
11 person to withdraw his or her plea of guilty and to enter a plea of not guilty,
12 or setting aside the verdict of guilty, or dismissing the accusation,
13 information, or indictment.”

14 9. Section 3754 of the Code states:

15 “The board may deny an application for, or issue with terms and conditions,
16 or suspend or revoke, or impose probationary conditions upon, a license in any
17 decision made after a hearing, as provided in Section 3753.”

18 10. California Code of Regulations, title 16, section 1399.370, states, in
19 pertinent part:

20 “For the purposes of denial, suspension, or revocation of a license, a
21 crime or act shall be considered to be substantially related to the
22 qualifications, functions or duties of a respiratory care practitioner, if it
23 evidences present or potential unfitness of a licensee to perform the
24 functions authorized by his or her license or in a manner inconsistent with
25 the public health, safety, or welfare. Such crimes or acts include but are not
26 limited to those involving the following:

27 (a) Violating or attempting to violate, directly or indirectly, or
28 assisting or abetting the violation of or conspiring to violate any provision

1 or term of the Act.

2 “...

3 (c) Conviction of a crime involving driving under the influence or
4 reckless driving while under the influence.

5 “...”

6 **COST RECOVERY**

7 11. Section 3753.5, subdivision (a) of the Code states:

8 “In any order issued in resolution of a disciplinary proceeding
9 before the board, the board or the administrative law judge may direct any
10 practitioner or applicant found to have committed a violation or violations
11 of law to pay to the board a sum not to exceed the costs of the investigation
12 and prosecution of the case.”

13 12. Section 3753.7 of the Code states:

14 “For purposes of the Respiratory Care Practice Act, costs of
15 prosecution shall include attorney general or other prosecuting attorney
16 fees, expert witness fees, and other administrative, filing, and service fees.”

17 13. Section 3753.1 of the Code states:

18 “(a) An administrative disciplinary decision imposing terms of
19 probation may include, among other things, a requirement that the
20 licensee-probationer pay the monetary costs associated with monitoring the
21 probation.

22 “...”

23 **FIRST CAUSE FOR DENIAL OF LICENSE**

24 (Conviction of Crimes Substantially Related to the Qualifications,
25 Functions, or Duties of a Respiratory Care Practitioner)

26 14. Respondent’s application is subject to denial under section 3750, as
27 defined by section 3750, subdivision (d), and Title 16 of the California Code of
28 Regulations, section 1399.370, in that Respondent has been convicted of crimes
substantially related to the qualifications, functions, or duties of a Respiratory Care

1 Practitioner, as more particularly described in paragraphs 15 through 26, below.

2 15. On or about October 16, 2005, Respondent was arrested for a
3 violation of Penal Code section 602.5 (b) [enter a dwelling without consent].

4 16. On or about October 21, 2005, Respondent was charged in the case
5 entitled *People of the State of California v. John Rimmer Vanderhoek*, Los Angeles
6 County Superior Court Case No. 5WL26434, with a violation of Penal Code section 602.5
7 (b) [enter a dwelling without consent].

8 17. On or about November 16, 2005, Respondent pled nolo contendere
9 to a violation of Penal Code section 602.5 (b) [enter a dwelling without consent], in the
10 case entitled *People of the State of California v. John Rimmer Vanderhoek*, Los Angeles
11 County Superior Court Case No. 5WL26434.

12 18. On or about November 16, 2005, the Court sentenced Respondent
13 in Case No. 5WL26434 to twenty-four (24) months informal probation and pay a fine with
14 penalty assessments totaling \$90.00.

15 19. On or about November 5, 2005, Respondent was arrested for
16 violations of Vehicle Code section 23152 (a) [driving under the influence of alcohol], and
17 Vehicle Code section 23152 (b) [driving with a blood alcohol level of .08% or higher].

18 20. On or about November 28, 2005, Respondent was charged in the
19 case entitled *People of the State of California v. John Rimmer Vanderhoek*, Orange
20 County Superior Court Case No. 05WM11942MA, with violations of Vehicle Code
21 section 23152 (a) [driving under the influence of alcohol], and Vehicle Code section
22 23152 (b) [driving with a blood alcohol level of .08% or higher].

23 21. On or about December 5, 2005, Respondent pled guilty to violations
24 Vehicle Code section 23152 (a) [driving under the influence of alcohol], and Vehicle Code
25 section 23152 (b) [driving with a blood alcohol level of .08% or higher], in the case
26 entitled *People of the State of California v. John Vanderhoek*, Orange County Superior
27 Court Case No. 05WM11942MA.

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1 22. On or about December 5, 2005, the Court sentenced Respondent in
2 Case No. 05WM11942MA to three (3) years informal probation, and pay a fine with
3 penalty assessments totaling \$ 390.00.

4 23. On or about February 1, 2007, Respondent was arrested for
5 violations of Vehicle Code section 23152 (a) [driving under the influence of alcohol], and
6 Vehicle Code section 23152 (b) [driving with a blood alcohol level of .08% or higher].

7 24. On or about March 1, 2007, Respondent was charged in the
8 case entitled *People of the State of California v. John Rimmer Vanderhoek*, Orange
9 County Superior Court Case No. 07WM02033MA, with violations of Vehicle Code
10 section 23152 (a) [driving under the influence of alcohol] with a prior conviction, and
11 Vehicle Code section 23152 (b) [driving with a blood alcohol level of .08% or higher]
12 with a prior conviction, and an additional allegation of driving with a blood alcohol level
13 of .20% or higher.

14 25. On or about April 3, 2007, Respondent pled guilty to violations of
15 Vehicle Code section 23152 (a) [driving under the influence of alcohol] with a prior
16 conviction, and Vehicle Code section 23152 (b) [driving with a blood alcohol level of
17 .08% or higher] with a prior conviction, and driving with a blood alcohol level of .20% or
18 higher, in the case entitled *People of the State of California v. John Rimmer Vanderhoek*,
19 Orange County Superior Court Case No. 07WM02033MA.

20 26. On or about April 3, 2007 the Court sentenced Respondent in
21 Case No. 07WM02033MA to forty five (45) days in Orange County jail, five (5) years
22 informal probation, an eighteen month Multiple Offender Alcohol Program and pay a fine
23 with penalty assessments totaling \$ 390.00.

24 **SECOND CAUSE FOR DENIAL OF LICENSE**

25 (Conviction of Crimes Involving Driving Under the Influence)

26 27. Respondent's application is further subject to denial under section
27 3750, as defined by section 3750, subdivision (d), and the California Code of Regulations
28 section 1399.370, subdivision (c), in that he was convicted of crimes involving driving

1 under the influence of alcohol, as more particularly described in paragraphs 19 through 26,
2 above, which are hereby incorporated by reference and realleged as if fully set forth herein.

3 **PRAYER**

4 WHEREFORE, Complainant requests that a hearing be held on the matters
5 herein alleged, and that following the hearing, the Board issue a decision:

6 1. Denying the application of Respondent for a Respiratory Care
7 Practitioner License;

8 2. Directing Respondent to pay the Respiratory Care Board of
9 California the costs of the investigation and enforcement of this case, and if placed on
10 probation, the costs of probation monitoring; and

11 3. Taking such other and further action as deemed necessary and
12 proper.

13 DATED: November 30, 2009

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15 Original signed by Liane Freels for:
16 STEPHANIE NUNEZ
17 Executive Officer
Respiratory Care Board of California
State of California
Complainant

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